

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
KENT FARMS, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 83-211

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violations of WAC 173-425-075(2), came before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, Lawrence J. Faulk (Vice Chairman and Presiding Officer), at a formal hearing on March 23, 1984, in Moses Lake, Washington.

Appellant represented himself; respondent was represented by Assistant Attorney General Wick Dufford. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Appellant, Kent Farms, Inc., grows and processes three different
5 varieties of mint plants and other crops on approximately 650 acres
6 near Othello, Washington.

7 II

8 The residue from the processing of mint plants is commonly called
9 "mint slugs." It consists of small pieces of mint plants which have
10 been "cooked" with steam at more than 212 degrees Farenheit. This
11 residue is immediately piled in stacks until it can be spread on the
12 fields. There are 60 units of nitrogen in each trailerload of mint
13 slugs so it has value as a fertilizer. Under these tightly-packed
14 conditions and certain wind directions, subterranean fires do occur in
15 the stacks.

16 III

17 On September 21, 1983, respondent's Eastern Region assistant
18 district supervisor of District 5 on routine inspection traveled to
19 Kent Farms.

20 This respondent's agent observed open burning of "mint slugs" and
21 piles of charred materials at a disposal site on the farm. The DOE
22 supervisor checked and determined that: (1) no burn permit had been
23 issued by the state; (2) Adams County does not have delegated
24 authority to issue commercial burn permits and; (3) there was no
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1 record of agricultural burning authorized by the DOE or Adams County
2 for the appellant.

3 IV

4 Appellant contends that on the day in question, the "mint slugs,"
5 or hay, caught fire by accident. He indicated that it is necessary to
6 stockpile the "mint hay" prior to spreading it on the fields. This is
7 necessary to remove disease that is caused by the processing which
8 would harm the mint plants growing in the field. He indicated that
9 all other fires detected by DOE in the past at this site were
10 accidents caused by the wind.

11 V

12 Respondent has detected fires in the mint slug piles at a disposal
13 site on the farm in the past and notified appellant of the
14 unacceptability of these unauthorized open burnings. A regulatory
15 order was issued by DOE to appellant in 1981 partly to address this
16 open burning circumstance.

17 Appellant received a regulatory order governing this matter, but
18 has no previous penalized violations of WAC 173-425-075(2). The
19 Department has had a history (since October, 1930) of enforcement
20 problems with the appellant relating to the spontaneous combustion of
21 the "mint slugs" stockpiled on the subject site. Appellant has not
22 demonstrated he has explored other ways of handling his mint slugs.
23 Other methods are available.

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VI

On October 20, 1983, respondent mailed a "Notice of Penalty Incurred and Due" containing a civil penalty of \$250 for the alleged violation.

DOE Order No. DE 83-444 is for alleged violation of WAC 173-425-075(2) and issued under authority of RCW 70.94.431.

From this notice of penalty appellant appealed to this Board on November 30, 1983.

VII

WAC 173-425-075(2) prohibits commercial open burning without authorization from DOE.

RCW 70.94.431 provides for a penalty of up to \$250 per day for each violation.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

A spontaneous fire of "mint slugs" constituting commercial open burning did occur at Kent Farms on September 21, 1983, without the approval of the respondent.

II

Appellant's argument that the subject fire started by itself and therefore was not his responsibility is not supported by the facts presented.

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III

Appellant's farm disposal site has been the subject of numerous investigations by respondent agency, partly because of fires in the mint stacks, which are impermissible under WAC 173-425-075(2). Appellant has also been previously ordered by respondent to insure subterranean and surface fires not occur after April 1, 1981. A full penalty for any air pollution violation appellant sustained is reasonable.

IV

Appellant did violate WAC 173-425-075(2) as alleged. A \$250 penalty under RCW 70.94.431 is appropriate.

V

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

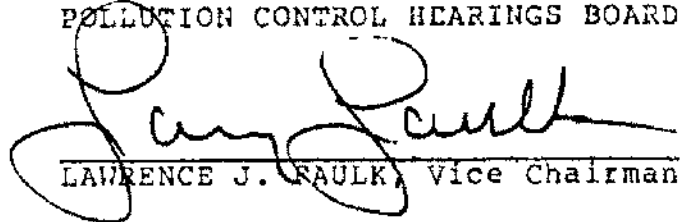
From these Conclusions the Board enters this

ORDER

The notice of violation and \$250 civil penalty is affirmed.
Appellant should find an alternate location that does not
spontaneously combust to stockpile the mint slugs or utilize a method
of disposing of the mint slugs that does not require stockpiling.

DATED this 13th day of April, 1984.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Vice Chairman


GAYLE ROTHROCK, Chairman

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 83-211